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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of
Billed Party Preference
for 0+ InterLATA Calls

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CC Docket No. 92-77

REPLY OF INTELICALL, INC.

Intellicall, Inc.

Judith St. Ledger-Roty
Michael R. Wack
REED SMITH SHAW & McCLAY
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 457-6100

Its Attorneys

June 17, 1992

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2/ Id. at ¶ 36.

innovation and other benefits that are evolving from such competition. AT&T did not even deign to justify this blatant and unreasonable discrimination against private pay telephone providers ("PPTOs"). No commenter presented a rational basis for allowing such discrimination to continue.

On the other hand, commenters provided strong arguments in favor of a Commission requirement that IXCs who choose to issue calling cards usable with 0+ access must make billing and validation for such cards available on a nondiscriminatory basis. In other words, card-issuing carriers must be required to make validation and billing available to everyone or to no one. This requirement will rescue consumers from the frustration and inconvenience they experience today when trying to make a calling card call by dialing 0+. Such a rule also will preserve opportunities for 0+ competition -- and the technological innovation such competition is spawning -- by forcing card-issuers to compete on business acumen and service quality, rather than through discriminatory, anticompetitive practices. Under the rule, carriers' ability to issue truly "proprietary" calling cards -- that is, cards usable only with dialing conventions that route calls directly to the carrier who issued the card -- will be preserved. Consumers will then decide whether such cards succeed or fail in the marketplace.

Parties who suggest that pending Billed Party Preference ("BPP") proposals should color the outcome of this proceeding are wrong. The Commission has not adopted BPP, and should not do so because of the extraordinary costs of implementing and

administering that system. Any attempt to use the possibility of BPP implementation as a rationale for action (or inaction) in the instant proceeding is premature and can only prejudice consideration of BPP issues. Thus, the Commission's public interest determinations in this proceeding should be determined solely with reference to today's factual circumstances and regulatory environment.

II. DISCUSSION

A. AT&T's CIID Card Practices Are Harming Consumers

The record demonstrates that AT&T's CIID card strategy is frustrating and inconveniencing millions of consumers, not helping them as AT&T asserts. ^{3/} Far from asking AT&T for the "protection" it claims CIID card provide, AT&T's own surveys show that consumers think using such cards is difficult and inconvenient. ^{4/} The "demand" for such limited-use cards is largely a creature of a AT&T's massive, "deep-pocket" marketing campaign in which is distributing millions of CIID cards and telling consumers that their old, unlimited-use cards no longer work.

AT&T neglected to inform consumers of the difficulty they would encounter in attempting to use CIID cards to place 0 calls from phones not presubscribed to AT&T. Commenter after commenter, including several LECs, testified that this campaign is at best

^{3/} AT&T Comments at 4.

^{4/} See CompTel Emergency Motion, CC Docket No. 91-115, filed Dec. 20, 1991, at 5-6 & n.6. The Commission has incorporated into the record of the instant proceeding the CompTel Emergency Motion and all pleadings relating to it. See notice at n.41.

misleading and at worst deceptive. 5/ It is resulting in substantial consumer inconvenience and frustration, for obvious reasons. After being led to believe by AT&T that CIID cards can be used universally to place 0+ calls, consumers meet up with the reality -- well known to AT&T -- that this isn't true. Rather, consumers confront a variety of possible outcomes. At locations served by PPTOs and IXCs other than AT&T, the card cannot be used to complete intra- or interLATA calls and is, effectively, worthless to the consumer. At thousands of other locations, the consumer may find it possible to complete an intraLATA call (i.e., because the pay telephone is LEC-provisioned) but not an interLATA call (i.e., because 0+ calls are presubscribed to a non-dominant carrier). The result is a mass of bewildered consumers and a host of uncompleted calls. Only under AT&T's Orwellian logic can this result be deemed "pro-consumer."

There is no record evidence that consumers want this kind of "help" from AT&T or anyone else. Consumers want their calls completed. If they desire a particular carrier, 10XXX dialing provides an established and increasingly well accepted means of achieving this result. By misleading consumers away from this option, AT&T is thwarting consumers' interests.

5/ See, e.g., MCI Comments at 3; Southwestern Bell Comments at 4; Advanced Telecommunications Corporation, Americall Systems, Inc. and First Phone of New England, Inc. Comments at 2; CompTel Comments at 3-4; American Public Communications Council ("APCC") Comments at 5-6.

B. Discriminatory AT&T/LEC CIID Card Practices
Are Foreclosing Competition In The Pay Telephone Market

In addition to harming consumers directly by blocking their attempts to complete 0+ calls, the record establishes that AT&T's CIID card practices are wreaking havoc on 0+ competition. ^{6/} The typical consumer does not realize that AT&T alone is responsible for thwarting attempts to use CIID cards ubiquitously. Instead, as pointed out by numerous commenters, ^{7/} consumers vent their frustration at the presubscribed carrier (in many cases, a PPTO), an event that increases pressure on location owners to replace that carrier with AT&T.

This negative impact on 0+ competition is particularly deleterious in the pay telephone segment of that market. ^{8/} Competition there consists principally of a battle between PPTOs and LECs for the right to place their equipment at aggregator locations. AT&T's discriminatory practice of permitting LECs -- but not PPTOs -- to validate and bill AT&T CIID card calls distorts this competition by skewing it overwhelmingly against PPTOs. This practice does not benefit consumers and, if allowed to continue, will ensure the demise of the pay telephone competition.

^{6/} See, e.g., International Telecharge, Inc. Comments at 6-19.

^{7/} See, e.g., Sprint Comments at 3; PhoneTel Technologies, Inc. Comments at 6-9; Comtel Computer Corporation Comments at 3-4.

^{8/} See, e.g., APCC Comments at 3-4, 6-10.

1. AT&T/LEC CIID Card Discrimination Is Anticompetitive

It is well established that AT&T has contractual agreements with virtually every LEC in the country that enable these LECs to process AT&T CIID card calls. ^{9/} Pursuant to these "Mutual Honoring Agreements," the LECs validate, bill and collect many of these calls, and in numerous instances actually carry the calls on their own facilities. ^{10/} AT&T refuses to enter into similar agreements with PPTOs. This unreasonable discrimination is severely anticompetitive.

Pay telephone providers compete against each other by offering "commissions" to aggregators in exchange for the right to locate equipment at their premises. Generally, the income generated at a particular pay telephone location is a PPTO's only source of commission revenue. ^{11/} Given AT&T's share of the 0+ market, the ability of any pay telephone provider (LEC or PPTO) to generate revenue depends in large measure on its ability to process AT&T calling cards calls. The LECs' exclusive ability to do so gives them a substantial and unwarranted competitive advantage over PPTOs (who are denied that ability by AT&T). ^{12/}

^{9/} AT&T has admitted to the existence of these agreements and, indeed, filed copies of model agreements with the Commission on Jan 30, 1992, in response to a Commission order, see AT&T Communications, 7 FCC Rcd 156, 158 (¶ 10) (1992).

^{10/} See AT&T Direct Case, supra n.3, at Appendix I.

^{11/} LECs commission payments are derived from many different non-pay telephone revenue sources, including general revenue accounts.

^{12/} LECs also enjoy unreasonable and unwarranted competitive advantages as a result of the existing asymmetrical

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The detrimental impact of this denial on PPTOs is not restricted to revenue losses. Many PPTOs routinely incur unrecoverable costs as a result of AT&T CIID card calls because equipment in the field may be incapable of distinguishing CIID cards from other calling cards. As a result, following the input of a CIID card number, this equipment launches a validation inquiry into the network, thereby generating access and validation charges for the PPTO -- even though the inquiry is futile. 13/

The PPTO revenue losses and cost increases described here grant LECs a substantial competitive advantage in pay telephone markets. This advantage is not earned through superior effort or business acumen on the part of the LECs, but results solely from AT&T's discriminatory CIID card practices. By their own admission, the LECs' interest in maintaining such advantage has nothing to do with promoting consumers' interests. Rather, as noted by Bell Atlantic, they merely want to preserve their existing hammerlock on the millions of dollars of revenue they

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regulation of LEC and PPTO operations. For this reason, Intellicall urges the Commission to grant APCC's motion to expand the billed party preference proceeding to include issues raised almost three years ago by the Public Telecommunications Council ("PTC"), see APCC Petition to Expand The Scope of Rulemaking, CC Docket No. 92-77, filed May 28, 1992.

13/ Although such inquiries are futile and costly for a PPTO, they benefit LECs, which collect access and validation charges from the PPTO on each validation attempt. This represents another way in which LECs profit to the disadvantage of PPTOs from the present CIID card situation.

receive annually solely as a result of the Mutual Honoring Agreements. 14/

The disparities discrimination generates between PPTOs and their primary competitors, the LECs, are choking off competitive opportunities in the pay telephone marketplace, and essentially foreclosing any future growth of that market. Reduced pay telephone competition does not benefit consumers. The Commission initiated such competition in 1984 with the expectation that competition in this area, as elsewhere, would benefit consumers by promoting consumer choice and technological innovation. This prediction has proven to be correct. A "technology time line" is attached to this reply. It graphically illustrates that PPTOs pioneered store-and-forward technology, automated collect, voice messaging and recognition technology, and specialized prison services. Each advance pushed PPTOs' competitors to introduce similar technology and services.

Consumers are reaping the benefits of these advances. Technological advances permit new generations of equipment in the field to be polled and diagnosed from remote locations, reducing maintenance costs and enabling a larger percentage of equipment to remain operational than ever before. This efficiency gain helps ensure that pay telephones are available to consumers when needed. Moreover, the emergence of competitive alternatives has greatly increased the number and location of pay telephones. This is not a "cream skimming" phenomenon. For example, evidence submitted to

14/ See Bell Atlantic Comments at 3.

the Commission by Intellicall in previous filings demonstrates that PPTOs deploy 40 percent of the pay telephone equipment located in disadvantaged areas in the State of New York, and that between 70 and 80 percent of PPTO equipment in California is located in previously unserved areas. ^{15/}

In short, PPT equipment is a rapidly developing technology platform that offers consumers a range of service capability and functionalities. The continued development of that platform, and its concomitant consumers benefits, are being curtailed severely by discriminatory AT&T/LEC practices that are driving PPTOs out of the marketplace. This scenario sounds apocalyptic -- and it is. The Commission must prevent further harm to the public interest by ending the AT&T practices that are causing this competitive harm.

2. AT&T Discrimination Against PPTOs Is Unreasonable

AT&T has never specifically justified its discrimination against PPTOs with regard to CIID card provisioning, even though the harmful effects of such activity are evident in the record of several Commission proceedings. ^{16/} Inexplicably, AT&T has dismissed such demonstrations as "completely unrelated" to the

^{15/} See Intellicall Comments In Support of Emergency Motion, CC Docket No. 91-115, filed Feb. 10, 1992, at 10 & Attachment B.

^{16/} See Comments of Intellicall, Inc., CC Docket No. 91-115, filed Aug. 15, 1991; Reply of Intellicall, Inc., CC Docket No. 91-115, filed Sept. 16, 1992; Intellicall, Inc. Comments In Support Of Emergency Motion, CC Docket No. 91-115, filed Feb. 10, 1992.

Commission's consideration of calling card issues. ^{17/} AT&T attempts to justify its discriminatory CIID card practices wholly through generalized allegations that consumers need protection against other carriers' practices and are demanding that their calls be validated and handled by AT&T and billed at AT&T's rates. ^{18/} With regard to the pay telephone market, these allegations are demonstrably false.

As noted previously, numerous intraLATA CIID card calls are handled by LECs, not AT&T. The fact that hundreds of thousands of such calls are handled every day by carriers other than AT&T demonstrates that consumers' care more about having their calls completed than about who carries it.

Moreover, it is deceiving for AT&T to imply that its CIID cards respond to consumers' expectation that they are guaranteed a single, uniform set of AT&T rates when using an AT&T CIID card. This expectation will be realized only on the minority of 0+ calls that are made on an interstate basis. LEC rates apply on most intraLATA calls. On intrastate, interLATA calls, consumers confront 50 separate sets of AT&T rates. Such rates differ markedly. For example, a California resident traveling in Texas will find that AT&T's rate for a typical intrastate calling card

^{17/} See AT&T Reply Comments In Opposition To CompTel's Motion For An Interim Order, CC Docket No. 91-115, filed Mar. 11, 1992, at 4 n*.

^{18/} See AT&T Comments at 4 n.**; 6 n.*; see also AT&T Comments In Opposition To CompTel's Motion For An Interim Order, CC Docket No. 91-115, filed Feb. 10, 1992, at 19; AT&T Reply Comments In Opposition To CompTel's Motion For An Interim Order, CC Docket No. 91-115, filed Mar. 13, 1992, at 3.

call made in Texas is nearly 100% higher than AT&T's rate for the same call if made in California. The effect of this pronounced rate disparity on AT&T's consumers is unknown to Intellicall. The point is that the existence of such disparities among AT&T's own intrastate tariff schedules eviscerates the allegation that CIID cards respond to consumers' expectation of being charged a uniform rate while making calls away from home.

It also is nonsense for AT&T to invoke "consumer protection" as a justification for its discriminatory CIID card practices. As noted previously, such practices actually are harming consumers. In any event, pay telephone market forces and the existing regulatory structure provide consumers far stronger protection than anything offered by AT&T.

The revenues aggregators receive from PPTO commission payments is a marginal aspect of their overall business operations, and it would be economically irrational for them to damage their primary revenue sources by allowing customers to be driven away by poor pay telephone service quality. Rather than sustain such revenue losses, aggregators simply terminate the pay telephone provider's contract. Thus, market incentives effectively discourage practices that frustrate or otherwise harm consumers, and a pay telephone provider that acts contrary to these incentives will find its stay in the marketplace short-lived. 19/

19/ A second market-based restraint on anti-consumer PPTO activity results from the fact that PPTOs' equipment is literally in consumers' hands. It is not unheard of for consumers to

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In addition to these market-based protections, consumers are shielded from inappropriate pay telephone practices by an extensive regulatory system devised by Congress and implemented by the Commission. Pursuant to that system, consumers are guaranteed access to information about the entity providing interstate service at all pay telephone locations, including the entity's name, address and service rates. ^{20/} Consumers also are guaranteed the right to access a different service provider because, by law, pay telephone providers must unblock the 800, 950 and 10XXX dialing conventions that provide the technical means for such alternative access. ^{21/} These statutory and regulatory safeguards represent the collective judgment of Congress and the Commission concerning the nature and degree of consumer protections in the operator services marketplace. Such safeguards were years in the making, and their rapid implementation is being accomplished through the investment of millions of dollars by PPTOs,

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take their frustrations out on such equipment, whether justified or not.

^{20/} See Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226 ("The Telephone Operator Consumer Services Improvement Act"); Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Report and Order, 6 FCC Rcd 2744 (1991). Most states have adopted similar, if not stronger consumer protections.

^{21/} See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report and Order, CC Docket No. 91-35, 6 FCC Rcd 4736 (1991). The Commission has stayed the 10XXX unblocking requirement temporarily, pending reconsideration. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Order, CC Docket No. 91-35, FCC No. 92-101, released Mar. 13, 1992. Many PPTOs have unblocked 10XXX access anyway, either voluntarily or in response to state requirements.

other operator service providers, aggregators and equipment manufacturers. AT&T practically begged Congress and the Commission to adopt and implement this system, and spent millions of dollars on advertising to encourage consumers to utilize the 10XXX dialing option that it provides. It is sheer chutzpah for AT&T to argue now, at the 11th hour of implementation, that Congress and the Commission have failed to protect consumers adequately, and that AT&T has a right to act as a private police officer on consumers' behalf.

C. The Commission Has Ample Authority
To Prevent The Harm Caused By AT&T CIID Cards

In the Notice, the Commission asked parties to address the jurisdictional basis for any action they request the Commission to take concerning AT&T CIID cards. ^{22/} AT&T responded with a breezy, and unsupported, assertion that the Commission lacks jurisdiction to take any such action. See AT&T Comments at 4. The record demonstrates otherwise. Commission authority to proscribe discriminatory AT&T CIID card practices is found in specific sections of the Communications Act relating to common carriers and their activities, as well as in those sections of the Act granting the Commission general antitrust authority. The exercise of this authority will not impose significant additional operating burdens on any carrier.

Title I of the Communications Act ("Act") confers on the Commission jurisdiction over interstate or foreign communications,

^{22/} Notice at ¶ 43.

which includes "the transmission of writing, signs, pictures, and sounds of all kinds. . . , including all instrumentalities, facilities, apparatus, and services. . . incidental to such transmission. ^{23/} Title II of the Act grants the Commission jurisdiction over common carriers, ^{24/} and specifically makes it unlawful for any such carrier to engage in an unreasonable practice or to "make of give any undue or unreasonable preference or advantage to any particular person, class of persons. . . or to subject any particular person, [or] class of persons. . . any undue or unreasonable prejudice or disadvantage." ^{25/} The Act also empowers the Commission to enforce the antitrust laws. ^{26/}

AT&T is a common carrier and, thus, subject to the prohibitions against unreasonable practices, preferences and discrimination contained in Title II. Moreover, as noted by BellSouth, there is no doubt that AT&T's activities relating to the validation and billing of AT&T-issued CIID cards are subject to the Act's standards and proscriptions. ^{27/} Intellicall and other commenters have demonstrated that AT&T's discriminatory and preferential treatment of LECs concerning CIID card validation and

^{23/} 47 U.S.C. §§ 152(a), 153(a) (emphasis added).

^{24/} 47 U.S.C. § 201 et seq.

^{25/} 47 U.S.C. §§ 201, 202.

^{26/} 47 U.S.C. §§ 151, 212; United States v. FCC, 652 F.2d 72 (D.C. Cir. 1980).

^{27/} See BellSouth Comments at 2-3; see also Policies and Rules Concerning Local Exchange Carrier Validation and Billing for Joint Use Calling Cards, CC Docket No. 91-115, FCC 92-168, released May 8, 1992, at ¶¶ 18-26.

billing is unreasonable, and that such practices are harming consumers and PPTOs. For these reasons, the Commission is empowered to conform AT&T's CIID card practices to the requirements of the Communications Act.

The specific action Intellicall requests is straightforward. Intellicall has no objection to the proliferation of proprietary calling cards -- that is, cards that can only be used through a dialing convention that routes a call to a particular carrier and its services, and to no other carrier. Proprietary cards are consistent with a competitive marketplace. Calling cards that are usable by dialing 0+ are not proprietary, however, and carriers should not be permitted to deploy such cards in the marketplace unless they offer other carriers the billing and validation capabilities needed to permit consumers to use such cards ubiquitously. At a minimum, the Commission should not permit any carrier to discriminate between LECs and PPTOs in the provisioning of 0+ calling cards.

Although requiring AT&T to permit PPTOs to validate CIID cards is critical to the survival of pay telephone competition, such a requirement will not unduly burden AT&T. The means to implement such a requirement is already in the hands of the LECs pursuant to their Mutual Honoring Agreements with AT&T. Thus, the validation and billing capabilities necessary for PPTOs and others to process CIID card calls can either be provided through the LECs or directly by AT&T on nondiscriminatory terms and conditions.

D. Neither Technology Nor BPP Considerations Justify The Continuation of Unreasonable CIID Card Practices

Various commenters argue that the Commission cannot adopt its proposed solution to the CIID card problem because some IXCs allegedly are technologically unable to implement a requirement that they distinguish between 0+ and 10XXX calls. ^{28/} Most of these same commenters argue that the Commission can save itself time and resources simply by concentrating on BPP implementation. These commenters are wrong.

The "technological limitations" argument is completely a red herring. No commenter has identified a technological barrier to enforcing the non-discrimination requirements of the Communications Act. In any event, it is nonsensical for commenters to argue that carriers may circumvent a statutory requirement merely through the deployment (or non-deployment) of technology.

The BPP argument also is without merit. The Commission has not adopted BPP, and should not do so because of the extraordinary costs of implementing and administering that system. Any attempt to use the possibility of BPP implementation as a rationale for action (or inaction) in the instant proceeding is premature and can only prejudice consideration of BPP issues. Thus, the Commission's public interest determinations in this proceeding should be determined solely with reference to today's factual circumstances and regulatory environment.


^{28/} See, e.g., AT&T Comments at 8-9.

III. CONCLUSION

AT&T's discriminatory CIID card activities are harming consumers and competition in pay telephone and 0+ markets. The Commission has ample authority to end such activities and, thereby, promote the public interest. The Commission should exercise such authority at the earliest opportunity, in keeping with the analysis and suggestions presented in these comments.

Respectfully submitted

INTELLICALL, INC.



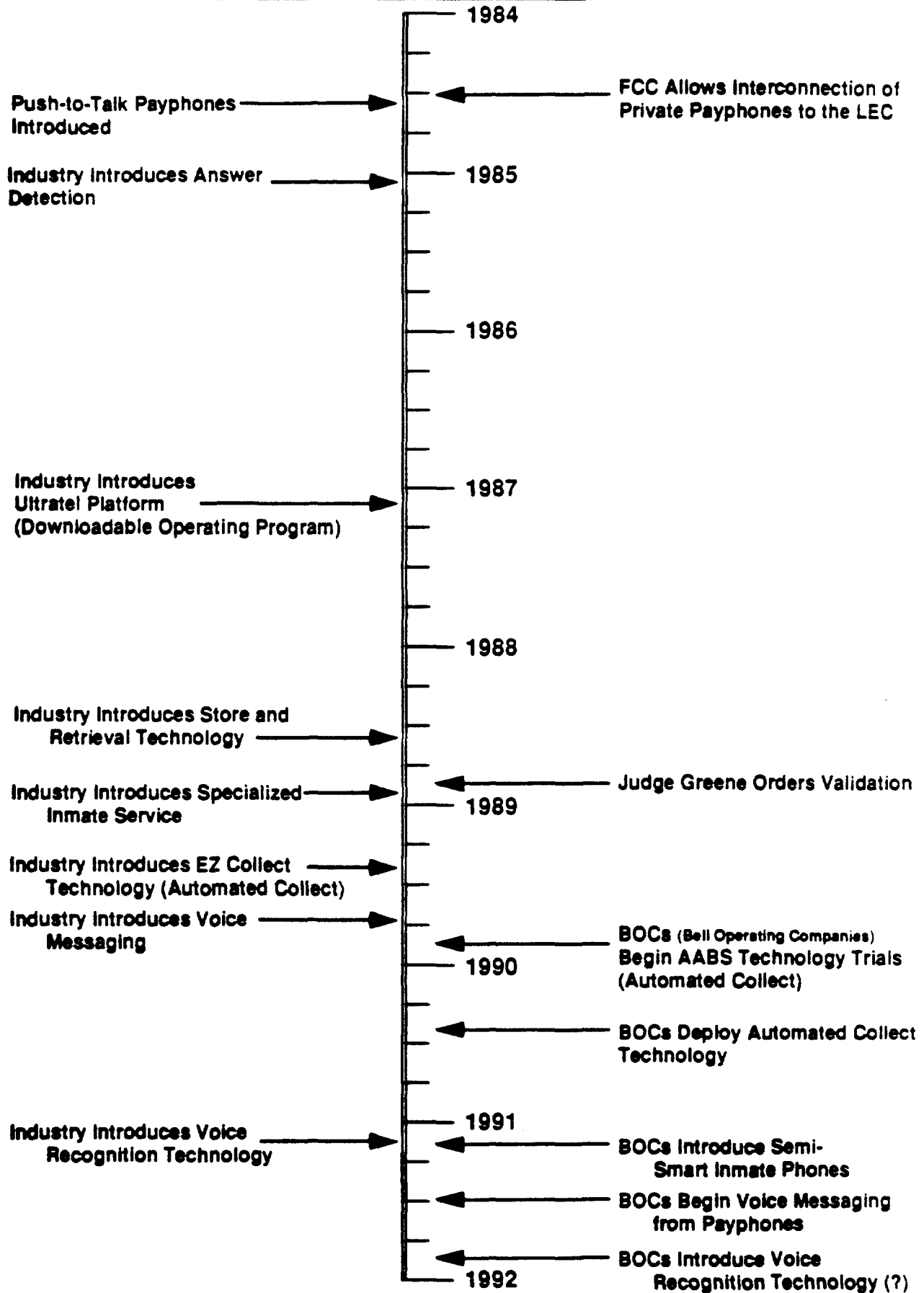
Judith St. Ledger-Roty
Michael R. Wack
REED SMITH SHAW & McCLAY
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 457-6100

Its Attorneys

June 17, 1992

ATTACHMENT

Technology Timeline



CERTIFICATE OF SERVICE

I, Phyllis D. Lee, hereby certify that a copy of the foregoing "Reply of Intellicall, Inc." was delivered by U.S. Mail, first class, postage prepaid, this 17th day of June 1992, to the parties on the attached service list, unless otherwise indicated:



Phyllis D. Lee

SERVICE LIST - CC DOCKET NO. 92-77

Donna R. Searcy, Secretary*
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

Kathleen Levitz*
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, DC 20554

Colleen Boothby*
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, DC 20554

Barbara Esbin*
Federal Communications Commission
1919 M Street, N.W.
Room 518
Washington, DC 20554

Bob Spangler*
Federal Communications Commission
2025 M Street, N.W.
Room 6206
Washington, DC 20036

William F. Werwaiss
Assistant Vice President
The Southern New England
Telephone Company
227 Church Street
New Haven, CT 06510-1806

John M. Goodman
Charles H. Kennedy
Attorneys for The Bell Atlantic
Telephone Companies
1710 H Street, N.W.
Washington, DC 20006

Gail L. Polivy
Daniel L. Bart
Attorneys for GTE Service
Corporation
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

David Cosson
L. Marie Guillory
Attorneys for the National
Telephone Cooperative
Association
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

William B. Barfield
Richard M. Sbaratta
Helen A. Shockey
Attorneys for South Central
Bell Telephone Company and
Southern Bell Telephone and
Telegraph Co.
1155 Peachtree Street, N.W.
Suite 1800
Atlanta, GA 30367-6000

Cheryl Tritt, Chief*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

Patrick A. Lee
William J. Balcerski
Attorneys for New York
Telephone Company and
New England Telephone
and Telegraph Company
120 Bloomingdale Road
White Plains, NY 10605

Amy S. Gross
Attorney for NYCOM Information
Services, Inc.
5 High Ridge Park
Stamford, CT 06905

Leon M. Kestenbaum
H. Richard Juhnke
Attorneys for US Sprint
Communications Company
Limited Partnership
1850 M Street, N.W.
11th Floor
Washington, DC 20036

Lawrence E. Sarjeant
Randall S. Coleman
Attorneys for U S West
Communications, Inc.
1020 19th Street, N.W.
Suite 700
Washington, DC 20036

Floyd S. Keene
Michael T. Mulcahy
Attorneys for the Ameritech
Operating Companies
30 South Wacker Drive
Suite 3900
Chicago, IL 60606

Durward D. Dupre
Richard C. Hartgrove
John Paul Walters, Jr.
Attorneys for Southwestern
Bell Telephone Company
1010 Pine Street, Room 2114
St. Louis, MO 63101

Danny E. Adams
Brad E. Mutschelknaus
WILEY, REIN & FIELDING
Integretel, Inc.
1776 K Street, N.W.
Washington, DC 20006

Albert H. Kramer
Robert F. Aldrich
KECK, MAHIN & CATE
Attorneys for the American
Public Communications Council
Penthouse Suite
1201 New York Avenue, N.W.
Washington, DC 20005-3919

James P. Tuthill
John W. Bogy
Theresa L. Cabral
Attorneys for Pacific Bell
and Nevada Bell
140 New Montgomery Street
Room 1530-A
San Francisco, CA 94105

Jean L. Kiddoo
SWINDLER & BERLIN Chartered
Counsel for Americall Systems
of Louisville, et al.
Suite 300
Washington, DC 20007

Francine J. Berry
Mark C. Rosenblum
Peter H. Jacoby
Attorneys for the American
Telephone and Telegraph Co.
Room 3244J1
295 North Maple Avenue
Basking Ridge, NJ 07920

Donald J. Elardo
Attorney for MCI Telecommunications
Corp.
1130 - 19th Street, N.W.
Washington, DC 20036

Martin T. McCue
Vice President and General Counsel
U.S. Telephone Association
900 19th Street, N.W.
Suite 800
Washington, DC 20006

Randolph J. May
Kenneth G. Starling
Elizabeth C. Buckingham
SUTHERLAND, ASBILL & BRENNAN
Attorneys for Capital Network
Systems, Inc.
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004-2404

Downtown Copy Center*
1919 M Street, N.W.
Room 246
Washington, DC 20036